

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:09CR57

UNITED STATES OF AMERICA

VS.

BRYAN KEITH NOEL

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ORDER

THIS MATTER is before the Court on Defendant's notice of appeal of the Magistrate Judge's Order of Detention and his request to file such appeal out of time. **Notice of Appeal and Motion to Revoke Detention Order and Request to File Out of Time, filed July 14, 2009.**

On June 3, 2009, Defendant was charged with one count of conspiracy to commit mail fraud, twenty-five counts of mail fraud and aiding and abetting in those offenses, and two counts of making false oaths in connection with his bankruptcy proceeding, in violation of 18 U.S.C. §§ 1349, 1341, and 152(2). **Bill of Indictment, filed June 3, 2009.**

At his arraignment on June 12, 2009, Defendant appeared with counsel and entered pleas of not guilty to all charges contained in the

indictment and requested a jury trial. In support of the Government's request for detention, Special Agent Barton Jenkins of the Federal Bureau of Investigation (FBI) testified as did three alleged victims of the financial scheme detailed in the indictment. Following presentation of the evidence, the Government argued for Defendant's detention pending trial; however, in the alternative, the Government urged that if the Court granted Defendant's pretrial release, electronic monitoring be imposed as a special condition to Defendant's bond. Defendant agreed to the condition of 24-hour electronic monitoring as well as the surrender of his passport. The Magistrate Judge concluded that the evidence showed Defendant represented a risk of flight due, in part, to the amount of funds from the alleged fraud scheme that have not been recovered; the number of charges against Defendant; and Defendant's lengthy history of world travel and Defendant was ordered detained pending trial. After announcing his findings in open court, the Magistrate Judge informed Defendant, and his counsel, that if he wished to appeal the detention order, such should be filed with the district court within 10 days following entry of the written order. On June 24, 2009, the Magistrate Judge filed his written Order of

Detention. On July 14, 2009, Defendant filed notice of appeal of the Order and a request to file such appeal out of time.

Defendant's counsel requests the Court to permit the filing of the appeal out of time due to the fact that she was out of the office when the written order was filed and "inadvertently missed" the notice of electronic filing sent to all of the parties. However, counsel does not explain why someone on her staff did not alert her to the filing of the detention order. Additionally, nothing prevented counsel from filing the notice of appeal after the Magistrate Judge's oral order. Therefore, the Court finds that Defendant's counsel has not demonstrated good cause for extending time for appeal nor is counsel's failure to file a timely notice of appeal the result of excusable neglect.

IT IS, THEREFORE, ORDERED that Defendant's request to file an appeal of the Magistrate Judge's Order of Detention out of time is **DENIED**.

Signed: July 16, 2009



Lacy H. Thornburg
United States District Judge

